

CUOMO LLC

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Hon. Andrew J. Peck
United States Magistrate Judge
Southern District of New York
US District Courthouse
500 Pearl Street
NYNY 10007

February 16, 2017

USDC SDNY
DOCUMENT
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DATE FILED: 2/21/17

Re: Fischer v. Forrest, et al

14-1304 #042100

Dear Judge Peck:

I write on behalf of plaintiff James Fischer to request an extension of time to complete fact discovery on this matter. Fact discovery closed yesterday pursuant to Your Honor's directive of January 13, 2017 (Docket Entry 130). The parties were engaged in the deposition of plaintiff James Fischer for almost the entire day yesterday. All defendants have been deposed.

The only issue outstanding for plaintiff is the defendants' responses to plaintiff's document request. A copy of the document demand is attached as an exhibit. The defendants' initial response objected to nearly every request. Plaintiffs sent them a response to their objections; that response is also attached as an exhibit. On February 10, 2017, defendants served an amended document response which did not transmit any additional documents; in fact, the only documents the defendants have provided to plaintiff are some pages from their catalogs that the court ordered them to produce at the last conference. A copy of their amended response is attached as an exhibit.

As the court can see, the amended response continues to make boilerplate objections that the requests are burdensome and/or that the documents are already in plaintiff's possession. Plaintiff has repeatedly told defendants that due to Hurricane Sandy, most of plaintiff's emails, documents and computer servers were lost and irretrievable. Therefore, the objection that the documents are in plaintiff's possession is simply wrong. Of course, even if they were in plaintiff's possession, defendant can still be asked to produce what they have in their possession.

On February 10, 2017, defendants also amended their Rule 26a disclosure which indicates that they intend to use at trial the very documents demanded from them in the document request: emails; pages from their catalog; and documents related to their website and catalog. A copy of their amended Rule 26 disclosure is attached as an exhibit.

I emailed my adversary Seth Hudson this morning at 7:56am asking whether he would consent to the extension. He stated that he would ask his client. I emailed him again 4:41pm when I had not heard from him and have not heard back in response to that last email. I respectfully request that the court grant the extension and schedule a discovery conference to address these remaining items. Thank you for your attention in this matter.

Sincerely,

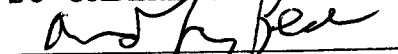
MEMO ENDORSED

Doc 147 2/23 at 3PM



OSCAR MICHELEN (Om 5199)

SO ORDERED:



Hon. Andrew J. Peck
United States Magistrate Judge

Apr 22 2017 Del Court
J. J. Engel

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BY ECF